

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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KITTY GRAHAM

Plaintiff,

v.

COLONIAL BANK, et al.,

Defendants.

2:06-CV-00270-WKW

U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALA

**PLAINTIFF KITTY GRAHAM'S RESPONSE TO DEFENDANT
THE COLONIAL BANCGROUP, INC.'S SUPPLEMENTAL MOTION TO DISMISS**

COMES NOW Plaintiff Kitty Graham to file her response to Defendant The Colonial Bancgroup's Supplemental Motion to Dismiss "any claims which the Plaintiff may have brought in this action on the basis of the Age Discrimination in Employment Act of 1967."

RESPONSE

According to the Age Discrimination in Employment Act of 1967, an employer is defined as ... "a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceeding calendar year ... The term also means (1) any agent of such a person..." where a person is defined as ... "one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons..." Additionally, the ADEA states that ... "the determination of whether an employer controls a corporation shall be based upon the-

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control, of the employer and the corporation.”

See www.eeoc.gov/policy/adea.html Accordingly, for the “current” year of 2005 (the year in which Colonial discriminated against Plaintiff), Defendant The Colonial Bancgroup published in its 10-K filing that “at December 31, 2005, BancGroup and its subsidiaries employed 4,607 persons.” See excerpt from 2005 10-K filing attached as Exhibit 1. Likewise, for the “preceding year” of 2004, Defendant The Colonial Bancgroup published in its 10-K filing that “at December 31, 2004, BancGroup and its subsidiaries employed 4,303 persons.” See excerpt from 2004 10-K filing attached as Exhibit 2. As a result, Defendant’s argument that “BancGroup had less than the requisite 20 employees required for coverage pursuant to the ADEA ...” is invalid and Plaintiff considers this just cause why the Defendant’s Motion should not be granted. Plaintiff did receive as follow up to the previous motion response a copy of the Affidavit of Tara Gibson as submitted by the Defendant. The referenced affidavit mentioned an attached report listing those employees considered to be Bancgroup employees. The pro se Plaintiff has not reviewed this report by virtue of its omission as an attachment to the affidavit. Therefore, Plaintiff has relied on published information available to the general public that was filed with the SEC (Securities and Exchange Commission) by the Defendant to determine compliance with the definition of employer according to the Age Discrimination in Employment Act of 1967. As Colonial BancGroup is the holding company (parent) for Colonial Bank and all other subsidiaries, and management, operational resources and labor relations are common, Colonial BancGroup meets the definition of an employer as defined by the ADEA.

WHEREFORE, PREMISES CONSIDERED Plaintiff Kitty Graham respectfully requests that this Court deny Defendant’s Motion to dismiss.

Done this 30th day of May, 2006.

Kitty Graham
Signature of Plaintiff Kitty Graham

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Address and Telephone Number of Plaintiff